

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs August 13, 2003

STATE OF TENNESSEE v. JAMES D. DYE

Direct Appeal from the Circuit Court for Rutherford County
No. 48780 James K. Clayton, Jr., Judge

No. M2002-01885-CCA-R3-CD - Filed December 23, 2003

The defendant, James Dye, was convicted in a bench trial of two counts of aggravated assault through use or display of a firearm, and one count of possession of a firearm for the purpose of using it in the commission of an offense to wit: aggravated assault. See Tenn. Code Ann. §§ 39-13-102; 39-17-1307. He received a three-year sentence for each aggravated assault conviction and a one-year sentence for the possession of a firearm offense, all to be served concurrently for an effective sentence of three years as a standard Range I offender. In this appeal, the defendant presents two issues: (1) whether the evidence is sufficient to support his convictions; and (2) whether convictions for aggravated assault and possession of a firearm for use in an aggravated assault, under the circumstances presented in this case, violated the defendant's rights under the double jeopardy provisions of the federal and state constitutions. After a thorough review of the record in this case and the applicable authorities we find no reversible error and therefore AFFIRM the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Trial Court are Affirmed.

JERRY L. SMITH, J., delivered the opinion of the court, in which GARY R. WADE, P.J., and DAVID G. HAYES, J., joined.

Jeffrey S. Burton, Assistant Public Defender, for the appellant, James Dye.

Paul G. Summers, Attorney General & Reporter; J. Ross Dyer, Assistant Attorney General; Bill Whitesell, District Attorney General; and John E. Price, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Factual Background

On the morning of May 25, 1999, the defendant went to the apartment of his ex-girlfriend, Cuffey Walters. According to Ms. Walters, Matt McGaugh and Brian Stancliff were present inside her apartment that day. When Ms. Walters answered the door, the defendant told her that he wanted to talk to her and take her to visit some “personal places.”

The defendant informed Ms. Walters that “he was carrying.” He then pulled out his .45 caliber handgun and held it up in the air. The defendant told Ms. Walters that she needed to go get her gun, because she may have to defend herself. Throughout this incident, Mr. Stancliff was watching from inside of the apartment. When he saw the defendant pull the gun, Mr. Stancliff called the police.

When the police arrived, the defendant forced Ms. Walters back into the apartment. As the defendant entered the apartment, Mr. Stancliff hit him with the door. The three began to struggle, during which time the defendant was disarmed. When the police entered the apartment, they struggled with the defendant for about two minutes. After finally subduing the defendant and placing him under arrest, the officers found another handgun, a .38 caliber pistol, on his person. The officer also found an assault rifle and another gun in the defendant’s car.

Sufficiency of the Evidence

The defendant challenges the sufficiency of the evidence used to convict him of two counts of aggravated assault and the possession of a firearm with the intent to use it in the commission of a felony.¹ Specifically, the defendant argues that there is no evidence from which a rational trier of fact, in this case the trial judge, could conclude that the defendant’s actions caused Ms. Walters or Mr. Stancliff to reasonably fear imminent bodily injury. See Tenn. Code Ann. § 39-13-101(a)(2).

When a defendant challenges the sufficiency of the evidence, this Court is obliged to review that claim according to certain well-settled principles. A verdict of guilty, rendered by a jury and “approved by the trial judge, accredits the testimony of the” State’s witnesses and resolves all conflicts in the testimony in favor of the State. State v. Cazes, 875 S.W.2d 253, 259 (Tenn. 1994); State v. Harris, 839 S.W.2d 54, 75 (Tenn. 1992). Thus, although the accused is originally cloaked with a presumption of innocence, the jury verdict of guilty removes this presumption “and replaces

¹ Although the caption in the defendant’s brief for this issue states that he is challenging the sufficiency of evidence for all three convictions, the brief makes no argument with respect to the firearm possession conviction. Nevertheless, we will address the sufficiency of the evidence with respect to that conviction.

it with one of guilt.” State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982). Hence, on appeal, the burden of proof rests with the defendant to demonstrate the insufficiency of the convicting evidence. Id. The relevant question the reviewing court must answer is whether any rational trier of fact could have found the accused guilty of every element of the offense beyond a reasonable doubt. See Tenn. R. App. P. 13(e); Harris, 839 S.W.2d at 75. In making this decision, we are to accord the State “the strongest legitimate view of the evidence as well as all reasonable and legitimate inferences that may be drawn therefrom.” See Tuggle, 639 S.W.2d at 914. As such, this Court is precluded from reweighing or reconsidering the evidence in evaluating the convicting proof. State v. Morgan, 929 S.W.2d 380, 383 (Tenn. Crim. App. 1996); State v. Matthews, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990). Moreover, we may not substitute our own “inferences for those drawn by the trier of fact from circumstantial evidence.” Matthews, 805 at 779.

The indictment charges in two separate counts that the defendant knowingly caused Ms. Walters and Mr. Stancliff “to reasonably fear imminent bodily injury by use or display of a deadly weapon, to wit: A FIREARM” These counts charge aggravated assault as that offense is defined at Tennessee Code Annotated sections 39-13-101(a)(2) and 39-13-102(a)(1)(B).

In this case the evidence shows that the defendant pulled a .45 caliber pistol and threatened both Ms. Walters and Mr. Stancliff. Both victims testified that they were afraid of the defendant. It is reasonable to infer that the fear experienced by individuals being threatened with a .45 caliber pistol is a reasonable fear of imminent bodily injury. This issue is without merit.

Possession of a Deadly Weapon with the Intent to Use it in the Commission of a Felony

Tennessee Code Annotated section 39-17-1307(c)(1) provides: “A person commits an offense who possesses any deadly weapon with the intent to employ it in the commission of or escape from an offense.” The proof in the instant case amply supports a conviction for this offense.

In the instant case the defendant, during the commission of two aggravated assaults, displayed one weapon, a .45 caliber pistol. He also carried a .38 caliber pistol on his person, and had a rifle in his car. It is certainly reasonable to conclude that any or all of these weapons were possessed with the intent to use them, if needed, in the commission of the aggravated assaults of Ms. Walters and Mr. Stancliff. This issue is without merit.

Alleged Double Jeopardy Violation

In his last issue presented for review, the defendant claims that his conviction for the aggravated assaults through use or display of the .45 caliber pistol and conviction for possession of the same weapon with the intent to use it in a felony violate his federal and state constitutional rights to be free of double jeopardy. If the weapon possession charge is based on the .45 caliber pistol the defendant is correct. See State v. Denton, 938 S.W.2d 375, 382 (Tenn. 1996) (holding that dual convictions for aggravated assault through display or use of a deadly weapon and possession of the

same weapon with the intent to use it in the aggravated assault violate Art. I, § 10 of the Tennessee Constitution which prohibits the government from placing a criminal defendant in double jeopardy).

The problem in the instant case is that count four of the indictment does not specify upon which of the three firearms found in the possession of the defendant the count is predicated. Ordinarily, this would cause grave concern not only because of the possibility of multiple convictions for the same offense a' la Denton, but also because of a lack of assurance that jurors were unanimous in their finding as to which firearm is the subject of the charge. See State v. Lemacks, 996 S.W.2d 166, 170 (Tenn. 1999); State v. Brown, 762 S.W.2d 135, 136-37 (Tenn. 1988); State v. Williams, 920 S.W.2d 247, 257 (Tenn. Crim. App. 1995). However, the instant case was a bench trial with the trial judge sitting not only as the arbiter of the law, but also as the trier of fact. Moreover, the Tennessee Supreme Court has held that a trial court judicially knows the state law applicable to the facts stated in an indictment. State ex rel. Scroggins v. Rice, 19 S.W.2d 227, 228 (1929). We may therefore presume, in the absence of any indication in the record to the contrary, that the learned trial judge in this case knew that convictions for the aggravated assault and the firearm possession charge in this case, if based on the same weapon, i.e., the .45 caliber pistol, would run afoul of Denton. We therefore find that the firearm possession conviction in this case is based on either the .38 caliber pistol found on the defendant's person or the rifle found in his car, or both. As noted, the evidence is sufficient to warrant a rational trier of fact to find that any of these firearms were possessed with the intent to use them in the aggravated assaults of Mr. Stancliff and Ms. Walters. As a result we find neither a double jeopardy nor a fact unanimity problem with the instant case.

Conclusion

In light of the foregoing, the judgments of the trial court are AFFIRMED.

JERRY L. SMITH, JUDGE